IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: May 20, 2011

Crl. Appeal No.707-DB of 2002

Mohd. Jahangir and others …Appellants

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE A.N.JINDAL

Present: Mr. Ranjan Lakhanpal, Advocate,
for the appellants.

Ms. Shubhra Singh, DAG, Haryana,
for the respondent-State.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The present appeal is preferred by Mohd. Jahangir, Mohd. Islam, Mohd. Ishak, Mohd. Azad, sons of Mohd. Kalim and Mohd. Kalim son of Altaf Khan against the judgment passed by the learned Additional Sessions Judge (Ad hoc), Faridabad on 28.08.2002, convicting the appellants for an offence punishable under Section 302 read with Section 34 IPC and sentencing them to undergo life imprisonment and to pay a fine of Rs.5000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for six months. The appellants were further convicted for an offence

punishable under Sections 323 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of six months.

The prosecution case was set in motion on the statement of Jaipal son of Nain Singh, uncle of the deceased-Sunder, made to SI Ajit Singh on 29.07.1999 at about 8.30pm. In his statement (Ex.PD), Jaipal stated that his nephew Bijender is running a grocer's shop. He stated that today i.e. 29.07.2009 in the morning at about 6.30 am, Bijender went to Perhlad Pur for taking the bags of milk from Mother Dairy. After some time, Raju son of Sukan, who is residing in their neighbourhood came to their house and told him that near *ganda nala* cycles of Bijender and Mohd. Ishak son of Mohd. Kalim have struck with each other and Mohd. Kalim along with his sons Mohd.Ishak and Mohd. Islam are beating Bijender. On hearing this, he along with his nephew Sunder and Raju, who came to told them, rushed to the place of occurrence and saw that Bijender is being given beatings by Mohd. Kalim and his sons Mohd. Islam and Mohd. Ishak with sticks (*dandas*). They tried to rescue them, upon which Mohd. Kalim, Mohd. Islam and Mohd. Ishak threatened them that they will also see them. Thereafter, after they intervened, then Mohd. Islam gave a blow with *lathi*, in his hand, on the head of Sunder. In the meantime, two other sons of Mohd. Kalim namely Azad Anwar and Jahangir came there and gave brick blows on the head of Sunder. As a result thereof, Sunder became unconscious. They raised alarm, then Dharamvir son of Hari Singh and Ishwar reached the spot and rescued them. Thereafter, he along with Raju, Dharmvir and Ishwar removed Bijender and Sunder to B.K.Hospital, Faridabad, where Bijender was discharged after giving

first aid, whereas Sunder was referred to Safdarjang Hospital for further treatment. On way, the condition of Sunder deteriorated, therefore, they admitted Sunder in Batra Hospital, Delhi. On the basis of such statement, ruqa (Ex.PD/1) was sent to the police station for registration of an FIR. On receipt of ruqa, FIR (Ex.PD/2) was recorded at about 10.05 pm on the same day.

On 31.07.1999, Sunder succumbed to the injuries at about 1.50 pm. The post-mortem examination on the dead body of Sunder was conducted by the board consisting of Dr. A. Lohan and Dr. N.K.Sharma. In their opinion, the cause of death was due to comma as a result of brain injury.

After arresting the accused and on completion of necessary formalities, all the accused were made to stand trial for an offence punishable under Section 302 and 323 read with Section 34 IPC.

To prove its case, the prosecution has examined PW-2 Dr. A. Lohan, who conducted post-mortem examination on the dead body of Sunder on 31.07.1999 alongwith Dr. N.K.Sharma.

PW-3 Dr. Sudhir Khurana, Medical Officer, B.K.Hospital, who medico-legally examined Bijender Singh and Sunder on 29.07.1999. He found as many as 12 injuries on the person of Bijender, whereas on the person of Sunder, he found lacerated injury on the frontal region of scalp. He also proved medico legal reports Ex.PB and PC in respect of Bijender and Sunder respectively.

PW-9 is Dr. R.K.Mathur, from Batra Hospital, New Delhi, who radiologically examined Sunder on 29.07.1999. He deposed that

on C.T. scan of the head of Sunder, he found that there was generalized low attenuation with obliteration of sulcal pattern in the right cerebral hemisphere. There was subgaleal Haemotama in the right temporal and parietal region and there was a thin subdural haemotama in the right temo-parietal region.

PW-6 Jaipal, author of FIR and the eye-witness, has deposed that he accompanied Raju and Sunder to the place of occurrence and when they tried to rescue Bijender, Islam gave a *lathi* blow on the head of Sunder, whereas Azad and Jahangir gave brick blows to Sunder. In his cross-examination, he stated that sunder is living with him in the same house and is his nephew. He further stated that they reached the place of occurrence within 4/5 minutes and when they reached there, the accused were beating Bijender. He stated that they reached B.K.Hospital in three wheeler at about 9.00 am.

PW-7 Bijender, injured, deposed that on 29.07.1999 at about 6.30 am, his cycle struck with the cycle of Ishak. Subsequently, Mohd. Kalim and his son Islam came there and started beating him with *lathis* and *dandas*. Thereafter, his brother Sunder and uncle Jai Pal came there and tried to rescue him, but Islam gave a *lathi* blow on the head of Sunder. In the meantime, two sons of Mohd. Kalim namely Azad and Jahangir came at the spot and gave brick blows to Sunder. Thereafter, Sunder fell down and became unconscious. He deposed that on hearing alarm, Dharambir and Ishwar came at the spot. In his cross-examination, he stated that his house is at a distance of 2 houses away from the house of Jai Pal and he received injuries on his left hand and face. He stated that he was given beatings by *danda*, *lathis*, bricks,

fist and slaps blow and that all the five accused have given beatings to him.

PW-8 is Raju, who reported the fact of beatings being given to Bijender to Jai Pal. He deposed that Islam gave *lathi* blow to Sunder at his head, when he came to the spot and thereafter Jahangir and Azad gave brick blows to Sunder. In his cross-examination, he stated that police recorded his statement at about 8.30/9.00 pm on the same day at Batra Hospital.

PW-10 is SI Ajeet Singh, the Investigating Officer, who deposed in respect of investigations carried out by him. He deposed that on 01.08.1999, he arrested accused Mohd. Kalim, Mohd. Azad, Mohd. Ishak and Mohd. Islam. He deposed that on 02.08.1999, he interrogated accused Mohd. Kalim, Mohd. Azad, Mohd. Ishak and Mohd. Islam, who suffered disclosure statements Exs.PP, PQ, PR and PS respectively. He deposed that accused Jahangir was arrested from the Court, where he surrendered, on 15.10.1999 and during interrogation, he suffered a disclosure statement Ex.PT.

Apart from examining the above witnesses, the prosecution has also examined other witnesses, who are formal in nature, to complete the chain of circumstances. The incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements recorded under Section 313 Cr.P.C. They impleaded false implication. After going through the evidence on record, the learned trial Court convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants has vehemently argued that the FIR has been lodged after gross delay, as the occurrence is said to be of morning i.e. at about 6.30 am, whereas first statement is made to the Police at about 8.30 pm. Such delay has been utilized by the prosecution to rope in all the male members of the family of Mohd. Kalim. It is contended that Bijender has received simple injuries, whereas Mohd. Islam is attributed single dang blow on the head of Sunder-deceased. Such dang blow was not with the intention of causing death and was result of sudden provocation without any premeditated mind. Thus, the conviction of the appellants is not sustainable except that of Islam in respect of whom the commission of offence under Section 304 Part-II alone is said to be disclosed.

Having heard learned counsel for the parties, we find that the argument that there is delay in lodging of FIR is not material to the prosecution case. Sunder has received grievous injuries and was serious and the Doctor at B.K.Hospital, Faridabad has referred him to Safdarjang Hospital, New Delhi. The attendants have taken him to Batra Hospital, to provide medical assistance, so as to save the life of critically injured patient. In view of the said fact, delay in lodging of FIR, does not affect the prosecution case. It is first priority of the family members to save life.

The occurrence has taken place all of a sudden, as a result of accident of two cyclists i.e. Bijender and Mohd. Ishak. PW 6 Jaipal along with Sunder and Raju reached at the place of occurrence later on. As per prosecution case, as deposed by PW 6 Jai Pal, PW-7 Bijender and PW-8 Raju**,** brick blows are attributed to Mohd. Azad and Mohd.

Jahangir. There are only two injuries on the head of the deceased, one of them was with *lathi* given by Islam. The prosecution has not explained that which of the two accused have given brick blow on the head of the deceased, the second injury. Therefore, the prosecution has failed to prove the inflicting of second injury by the aforesaid accused. Therefore, such accused are entitled to benefit of doubt in causing death of Sunder.

Mohd. Islam is attributed single *lathi* blow on the head of Sunder. Such injury on the head was the cause of death, therefore, Mohd. Islam has been rightly convicted and sentenced. He came to the spot armed with *danda* after the fight ensued. He gave blow with such intensity, which led to the death of Sunder. Therefore, though the occurrence has started suddenly, but the accused came to the spot armed with *lathi* with an intention to cause harm to the victim party. Thus, inflicting of fatal blow on the head of Sunder by Mohd. Islam does not fall within any of the exceptions of Section 300 and he has been rightly convicted and sentenced for an offence punishable under Section 302 IPC.

From the testimony of PW-7 Bijender-injured, PW-6 Jaipal and PW-8 Raju, it stands proved that the accused were given beatings to Bijender and have caused as many as 12 injuries to Bijender, but fortunately none of them is grievous. Inflicting of large number of injuries have been rightly taken into consideration by the learned trial Court to convict the appellants for an offence punishable under Section 323 read with 34 IPC. We do not find that such findings of conviction and sentence are suffering from any illegality. The prosecution has

neither alleged or proved any fatal blow by accused Mohd. Kalim and Mohd. Ishak on the person of the deceased. They have been charged with the aid of Section 34 of IPC. Since all the accused have came to the spot at the spur of the movement, it cannot be said that they shared a common intention to cause death of Sunder. But the fact that they came to the spot to save Mohd. Islam, who had scuffle with Bijender, they have been rightly convicted for an offence punishable under Section 323 read with 34 IPC.

In view of the above, the appeal qua Mohd. Islam is dismissed, whereas the appeal of Mohd. Jahangir, Mohd. Ishak, Mohd. Azad and Mohd. Kalim is partly allowed. They are acquitted of the charges for an offence punishable under Section 302 read with 34 IPC by granting them benefit of doubt, but their conviction for an offence punishable under Section 323 read with 34 IPC is maintained.

(HEMANT GUPTA)
JUDGE

20.05.2011
Vimal

(A.N.JINDAL)
JUDGE